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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/633,297

07/31/2003

Al M. Arellanes

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01/28/2004

EXAMINER

MAYO, TARA L

KOLISCH HARTWELL, P.C.

520 S.W. YAMHILL STREET

SUITE 200

PORTLAND, OR 97204

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/633,297

**Applicant(s)**

ARELLANES, AL M.

**Examiner**

Tara L. Mayo

**Art Unit**

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**P r i d for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 111303 . 6) ☐ Other: .

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### **DETAILED ACTION**

1. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 3671.

#### ***Priority***

2. It is noted that this application appears to claim subject matter disclosed in prior Application No. 10/086,772, filed 28 February 2002. The reference to the prior application in the first sentence of the specification of this application should include the current status of all nonprovisional parent applications referenced.

#### ***Specification***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because it contains phrases that can be implied. On line 2 of the Abstract, delete "is provided." Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claim 9, the recitation of "sheet-like" renders the scope of the claimed invention indefinite. Specifically, it is unclear what structure the term is intended to encompass. Claim 10 is similarly rejected for the recitation of "strip-like."

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 17 through 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson, Jr. (U.S. Patent No. 4,945,689).

Johnson, Jr. '689, as seen in Figures 1 through 4, discloses a fluent material confinement system configured to receive a granular fluent solid to form a temporary barrier structure, the fluent material confinement system comprising:  
with regard to claim 17,

a plurality of strips (104, 108), the plurality of strips including a plurality of lengthwise strips (104) and a plurality of widthwise strips (108) coupled with each other to define a plurality of open cells (102);

at least one connecting structure (114A, 118A) formed in an end of a selected strip, the connecting structure being configured to be coupled to a complementary connecting structure on an adjacent fluent material confinement system to connect the fluent material confinement system to the adjacent fluent material confinement system (col. 9, lines 57 through 63), wherein the connecting structure includes a tongue (106, 110) formed in the end of the selected strip at a location spaced from the perimeter of

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the end of the selected strip, and wherein the tongue is configured to fit within a slot on the adjacent fluent material confinement system;

with regard to claim 18,

wherein the tongue is formed from a slot having a generally "U"-shaped configuration; and

with regard to claim 19,

wherein each lengthwise strip has opposing ends, and wherein each end of each lengthwise strip includes a connecting structure.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1 through 16 and 20 through 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, Jr. (U.S. Patent No. 4,945,689) in view of Benjamin (U.S. Patent No. 3,878,638).

Johnson, Jr. '689, as seen in Figures 1 through 4 and 10, discloses a collapsible fluent material confinement system configured to receive a granular fluent material to form a temporary barrier structure, the fluent material confinement system comprising:

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with regard to claim 1,

a plurality of strips (104, 108) coupled to one another to form a grid (100), the plurality of strips including a plurality of lengthwise strips (104) and a plurality of widthwise strips (108), wherein the lengthwise strips and the widthwise strips are coupled with one another such that the grid is movable between an open configuration, in which the cells (102) are expanded to receive the granular fluent material, and at least one collapsed configuration for storage;

with regard to claim 2,

wherein each strip of the plurality of strips includes a width, wherein at least one selected strip has a greater width than the other strips (col. 11, lines 58 through 62);

with regard to claim 3,

wherein two selected strips have a greater width than the other strips (col. 11, lines 58 through 62);

with regard to claim 9,

wherein the at least one collapsed configuration (see Fig. 2F) includes a substantially flattened, sheet configuration;

with regard to claim 10,

wherein the at least one collapsed configuration (see Fig. 2D) includes a substantially flattened, strip configuration;

with regard to claim 12,

wherein the strips are made of a translucent material (i.e., polycarbonate; col. 8, lines 11 through 16);

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with regard to claim 13,

wherein the strips are made of a transparent material (i.e., polycarbonate; col. 8, lines 11 through 16);

with regard to claim 14,

wherein the strips are made of a plastic material (i.e., polycarbonate; col. 8, lines 11 through 16);

with regard to claim 15,

wherein the strips are made of polycarbonate;

with regard to claim 16,

wherein the strips include impact and flexural modifiers (i.e., metallic fillers; col. 8, lines 17 through 9);

with regard to claims 23 and 27,

stacking a second grid on the first grid before filling the cells of the grid with the fluent granular material (see Figure 10);

with regard to claim 24,

connecting the second grid to the first grid in a side-by-side manner before filling the cells of the grid with the fluent material;

with regard to claim 25,

wherein connecting the second grid to the first includes inserting a tongue (106, 110) on the first grid through a slot on the second grid;

with regard to claim 28,

the grid having a corner; and

with regard to claim 29,



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the selected strip having a height.

Johnson, Jr. '689 discloses all of the features of the claimed invention with the exception(s) of:

with regard to claim 1,

a deployment indicator disposed on a selected strip, wherein the deployment indicator is configured to be effective in low visibility conditions to indicate to a user how to move the grid from the collapsed configuration to the open configuration;

with regard to claim 2,

the deployment indicator being disposed on the strip of greater width;

with regard to claim 3,

the deployment indicator being disposed on the two strips of greater width;

with regard to claim 4,

the deployment indicator being configured to visually enhance a portion of the selected strip;

with regard to claim 5,

the deployment indicator including a reflective portion;

with regard to claim 6,

the reflective portion being a background portion, and the deployment indicator including a directionally indicating portion disposed within the background portion;

with regard to claim 7,

the directionally indicating portion including an alphanumeric portion;

with regard to claim 8,

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the directionally indicating portion including an arrow indicating a direction in which a user is to pull to move the grid from the at least one collapsed configuration to the open configuration;

with regard to claim 9,

the directionally indicating portion indicating a direction the selected strip is to be pulled to move the grid to the open configuration from the substantially flattened, sheet configuration;

with regard to claim 10,

the directionally indicating portion indicating a direction the selected strip is to be pulled to move the grid to the open configuration from the substantially flattened, strip configuration;

with regard to claim 11,

the deployment indicator including a fluorescent portion;

with regard to claim 26,

an orientation indicator disposed on a selected strip, wherein the orientation indicator is configured to be effective in low visibility conditions to indicate to a user the orientation of the grid to facilitate stacking of a plurality of grids;

with regard to claim 27,

the orientation indicator being configured to be aligned with an orientation indicator of a second grid when the second grid is stacked on the first grid;

with regard to claim 28,

the orientation indicator being disposed on a selected strip adjacent the corner of the grid; and

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with regard to claim 29,

the orientation indicator extending the height of the selected strip.

Benjamin '638, as seen in Figs. 1 through 17, shows a sheet article comprising indicia positioned on corners of a sheet of material and instructing a user how to maneuver the article, the indicia visually enhancing a portion of the article and including a directionally indicating portion, the directionally indicating portion including an alphanumeric portion (col. 5, lines 21 through 25) and an arrow (101) indicating a direction in which a user is to maneuver the article to become three-dimensional. Additionally, Benjamin '638 teaches the use of the indicia as orientation markers facilitating alignment (col. 5, lines 26 through 30 and 39 through 44). Benjamin '638 further teaches the desirability of enclosing the indicia within bounding enclosures for ease of identification (col. 4, lines 5 through 7).

With regard to claims 1 through 4 and 26 through 29, it would have been obvious to one of ordinary skill in the art of earth engineering at the time of invention to modify the device disclosed by Johnson, Jr. '689 with indicators as suggested by Benjamin '638. The motivation would have been to clearly instruct a user how to prop or collapse the system.

With regard to claims 1 through 3, it would have been obvious to one of ordinary skill in the art of earth engineering at the time of invention to modify the device disclosed by Johnson, Jr. '689 and Benjamin '638 such that the deployment

indicator would be placed on the strips of increased width. The motivation would have been to make the indicator readily recognizable by a user.

With regard to claims 5 through 10, it would have been obvious to one of ordinary skill in the art of earth engineering at the time of invention to further modify the device disclosed by Johnson, Jr. '689 with a deployment indicator including a reflective portion, the reflective portion being a background portion, and a directionally indicating portion disposed within the background portion as suggested by Benjamin '638. The motivation would have been to make the deployment indicator readily identifiable by a user.

With regard to claim 11, it would have been obvious to one of ordinary skill in the art of earth engineering at the time of invention to further modify the device disclosed by Johnson, Jr. '689 with a deployment indicator including a fluorescent portion as suggested by Benjamin '638. The motivation would have been to make the deployment indicator readily identifiable by a user.

With regard to claims 20 through 22 and 30, the method steps recited therein are inherent to the use of the device disclosed by the combination of Johnson, Jr. '689 and Benjamin '638.

With regard to claim 29, the combination of Johnson, Jr. '689 and Benjamin '638 discloses all of the features of the claimed invention with the exception of the orientation indicator extending the height of the selected strip. It would have been an obvious matter of design choice to make the indicator larger since such a modification would have involved a mere change in the size of a component. A change in size is

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generally recognized as being within the level of ordinary skill in the art of indicators.

*In re Rose*, 105 USPQ 237 (CCPA 1955).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 703-305-3019. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.



TLM

23 January 2004



THOMAS B. WILL  
SUPERVISORY PATENT EXAMINER  
GROUP 3600